

1 Introduced by Committee on Health Care

2 Date:

3 Subject: Health; COVID-19; health care providers; regulatory flexibility

4 Statement of purpose of bill as introduced: This bill proposes to extend until
5 March 31, 2024 certain provisions of previous acts allowing for health care-
6 related regulatory flexibility during and after the COVID-19 pandemic. The
7 bill would continue indefinitely the ability of authorized health care
8 professionals to renew buprenorphine prescriptions without requiring an office
9 visit, provided that doing so is allowed by federal law, and would require the
10 Board of Medical Practice to report on ways to increase efficiency in
11 Vermont’s physician licensure process.

12 An act relating to extending COVID-19 health care regulatory flexibility

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 2020 Acts and Resolves No. 91, as amended by 2020 Acts and

15 Resolves No. 140, Sec. 13, 2020 Acts and Resolves No. 159, Sec. 10, 2021

16 Acts and Resolves No. 6, Secs. 1 and 3, 2021 Acts and Resolves No. 69, Sec.

17 19, and 2022 Acts and Resolves No. 85, Sec. 1, is further amended to read:

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* * * Compliance Flexibility * * *

Sec. 4. HEALTH CARE AND HUMAN SERVICE PROVIDER
REGULATION; WAIVER OR VARIANCE PERMITTED

Notwithstanding any provision of the Agency of Human Services’ administrative rules or standards to the contrary, through March 31, ~~2023~~ 2024, the Secretary of Human Services may waive or permit variances from the following State rules and standards governing providers of health care services and human services as necessary to prioritize and maximize direct patient care, support children and families who receive benefits and services through the Department for Children and Families, and allow for continuation of operations with a reduced workforce and with flexible staffing arrangements that are responsive to evolving needs, to the extent such waivers or variances are permitted under federal law:

- (1) Hospital Licensing Rule;
- (2) Hospital Reporting Rule;
- (3) Nursing Home Licensing and Operating Rule;
- (4) Home Health Agency Designation and Operation Regulations;
- (5) Residential Care Home Licensing Regulations;
- (6) Assisted Living Residence Licensing Regulations;
- (7) Home for the Terminally Ill Licensing Regulations;

- 1 (8) Standards for Adult Day Services;
- 2 (9) Therapeutic Community Residences Licensing Regulations;
- 3 (10) Choices for Care High/Highest Manual;
- 4 (11) Designated and Specialized Service Agency designation and
5 provider rules;
- 6 (12) Child Care Licensing Regulations;
- 7 (13) Public Assistance Program Regulations;
- 8 (14) Foster Care and Residential Program Regulations; and
- 9 (15) other rules and standards for which the Agency of Human Services
10 is the adopting authority under 3 V.S.A. chapter 25.

11 Sec. 5. GREEN MOUNTAIN CARE BOARD RULES; WAIVER OR
12 VARIANCE PERMITTED

13 (a) Notwithstanding any provision of 18 V.S.A. chapter 220 or 221,
14 8 V.S.A. § 4062, 33 V.S.A. chapter 18, subchapter 1, or the Green Mountain
15 Care Board’s administrative rules, guidance, or standards to the contrary,
16 through March 31, ~~2023~~ 2024, the Green Mountain Care Board may waive or
17 permit variances from State laws, guidance, and standards with respect to the
18 following regulatory activities, to the extent permitted under federal law, as
19 necessary to prioritize and maximize direct patient care, safeguard the stability
20 of health care providers, and allow for orderly regulatory processes that are
21 responsive to evolving needs related to the COVID-19 pandemic:

- 1 (1) hospital budget review;
- 2 (2) certificates of need;
- 3 (3) health insurance rate review; and
- 4 (4) accountable care organization certification and budget review.

5 (b) As part of any proceeding conducted on or after February 1, 2022 to
6 establish or enforce a hospital’s fiscal year 2022 or 2023 budget, the Green
7 Mountain Care Board shall consider the hospital’s extraordinary labor costs
8 and investments, as well as the impacts of those costs and investments on the
9 affordability of health care.

10 Sec. 6. MEDICAID AND HEALTH INSURERS; PROVIDER
11 ENROLLMENT AND CREDENTIALING

12 Until March 31, ~~2023~~ 2024, and to the extent permitted under federal law,
13 the Department of Vermont Health Access shall relax provider enrollment
14 requirements for the Medicaid program, and the Department of Financial
15 Regulation shall direct health insurers to relax provider credentialing
16 requirements for health insurance plans, in order to allow for individual health
17 care providers to deliver and be reimbursed for services provided across health
18 care settings as needed to respond to Vermonters’ evolving health care needs.

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20 Sec. 8. ACCESS TO HEALTH CARE SERVICES; DEPARTMENT OF
21 FINANCIAL REGULATION; EMERGENCY RULEMAKING

1 (a) It is the intent of the General Assembly to increase Vermonters' access
2 to medically necessary health care services during and after a declared state of
3 emergency in Vermont as a result of COVID-19.

4 (b)(1) Until April 1, ~~2023~~ 2024, and notwithstanding any provision of
5 3 V.S.A. § 844 to the contrary, the Department of Financial Regulation shall
6 consider adopting, and shall have the authority to adopt, emergency rules to
7 address the following through March 31, ~~2023~~ 2024:

8 (A) expanding health insurance coverage for, and waiving or limiting
9 cost-sharing requirements directly related to, the diagnosis of COVID-19,
10 including tests for influenza, pneumonia, and other respiratory viruses
11 performed in connection with making a COVID-19 diagnosis; the treatment of
12 COVID-19 when it is the primary or a secondary diagnosis; and the prevention
13 of COVID-19; and

14 (B) modifying or suspending health insurance plan deductible
15 requirements for all prescription drugs, except to the extent that such an action
16 would disqualify a high-deductible health plan from eligibility for a health
17 savings account pursuant to 26 U.S.C. § 223.

18 (2) Any rules adopted in accordance with this subsection shall remain in
19 effect until not later than April 1, ~~2023~~ 2024.

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* * * Regulation of Professions * * *

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Sec. 17. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
MEDICAL PRACTICE; OUT-OF-STATE HEALTH CARE
PROFESSIONALS

(a) Notwithstanding any provision of Vermont’s professional licensure statutes or rules to the contrary, through March 31, ~~2023~~ 2024, a health care professional, including a mental health professional, who holds a valid license, certificate, or registration to provide health care services in any other U.S. jurisdiction shall be deemed to be licensed, certified, or registered to provide health care services, including mental health services, to a patient located in Vermont as a volunteer member of the Medical Reserve Corps or, for a period not to exceed six months, as part of the staff of a licensed facility, other health care facility as defined in 18 V.S.A. § 9432, or federally qualified health center, provided the health care professional:

(1) is licensed, certified, or registered in good standing in the other U.S. jurisdiction or jurisdictions in which the health care professional holds a license, certificate, or registration;

(2) is not subject to any professional disciplinary proceedings in any other U.S. jurisdiction; and

1 (3) is not affirmatively barred from practice in Vermont for reasons of
2 fraud or abuse, patient care, or public safety.

3 (b) A health care professional who plans to provide health care services in
4 Vermont as a volunteer member of the Medical Reserve Corps or as part of the
5 staff of a licensed facility, other health care facility as defined in 18 V.S.A.
6 § 9432, or federally qualified health center shall submit or have submitted on
7 the individual’s behalf the individual’s name, contact information, and the
8 location or locations at which the individual will be practicing to:

9 (1) the Board of Medical Practice for medical doctors, physician
10 assistants, and podiatrists; or

11 (2) the Office of Professional Regulation for all other health care
12 professions.

13 (c) A health care professional who delivers health care services in Vermont
14 pursuant to subsection (a) of this section shall be subject to the imputed
15 jurisdiction of the Board of Medical Practice or the Office of Professional
16 Regulation, as applicable based on the health care professional’s profession, in
17 accordance with Sec. 19 of this act.

18 (d)(1) This section shall remain in effect through March 31, ~~2023~~ 2024,
19 provided the health care professional remains licensed, certified, or registered
20 in good standing throughout the period the health care professional is
21 practicing in Vermont, which shall not exceed six months for a health care

1 professional providing health care services as part of the staff of a licensed
2 facility, other health care facility as defined in 18 V.S.A. § 9432, or federally
3 qualified health center.

4 (2) The Board of Medical Practice and Office of Professional
5 Regulation shall provide appropriate notice of the March 31, ~~2023~~ 2024
6 expiration date of this section to:

7 (A) health care professionals providing health care services in
8 Vermont under this section;

9 (B) the Medical Reserve Corps; and

10 (C) health care facilities and federally qualified health centers at
11 which health care professionals are providing services under this section.

12 (e) Nothing in this section is intended to limit, restrict, or modify the
13 application of existing or future federal waivers of health care professional
14 licensure requirements to licensed and certified facilities.

15 * * *

16 Sec. 20. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
17 MEDICAL PRACTICE; EMERGENCY AUTHORITY TO ACT
18 FOR REGULATORY BOARDS

19 (a)(1) Through **March 31, 2023**, if the Director of Professional Regulation
20 finds that a regulatory body attached to the Office of Professional Regulation
21 by 3 V.S.A. § 122 cannot reasonably, safely, and expeditiously convene a

1 quorum to transact business, the Director may exercise the full powers and
2 authorities of that regulatory body, including disciplinary authority.

3 (2) Through **March 31, 2023**, if the Executive Director of the Board of
4 Medical Practice finds that the Board cannot reasonably, safely, and
5 expeditiously convene a quorum to transact business, the Executive Director
6 may exercise the full powers and authorities of the Board, including
7 disciplinary authority.

8 (b) The signature of the Director of the Office of Professional Regulation
9 or of the Executive Director of the Board of Medical Practice shall have the
10 same force and effect as a voted act of their respective boards.

11 (c)(1) A record of the actions of the Director of the Office of Professional
12 Regulation taken pursuant to the authority granted by this section shall be
13 published conspicuously on the website of the regulatory body on whose
14 behalf the Director took the action.

15 (2) A record of the actions of the Executive Director of the Board of
16 Medical Practice taken pursuant to the authority granted by this section shall
17 be published conspicuously on the website of the Board of Medical Practice.

18 Sec. 21. OFFICE OF PROFESSIONAL REGULATION; BOARD OF
19 MEDICAL PRACTICE; EMERGENCY REGULATORY
20 ORDERS

1 Through **March 31, 2023**, the Director of Professional Regulation and the
2 Commissioner of Health may issue such orders governing regulated
3 professional activities and practices as may be necessary to protect the public
4 health, safety, and welfare. If the Director or Commissioner finds that a
5 professional practice, act, offering, therapy, or procedure by persons licensed
6 or required to be licensed by Title 26 of the Vermont Statutes Annotated is
7 exploitative, deceptive, or detrimental to the public health, safety, or welfare,
8 or a combination of these, the Director or Commissioner may issue an order to
9 cease and desist from the applicable activity, which, after reasonable efforts to
10 publicize or serve the order on the affected persons, shall be binding upon all
11 persons licensed or required to be licensed by Title 26 of the Vermont Statutes
12 Annotated, and a violation of the order shall subject the person or persons to
13 professional discipline, may be a basis for injunction by the Superior Court,
14 and shall be deemed a violation of 3 V.S.A. § 127.

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16 * * * Telehealth * * *

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18 **Sec. 26. WAIVER OF CERTAIN TELEHEALTH REQUIREMENTS**

19 **FOR A LIMITED TIME**

20 Notwithstanding any provision of 8 V.S.A. § 4100k or 18 V.S.A. § 9361 to
21 the contrary, through March 31, ~~2023~~ 2024, the following provisions related to

1 the delivery of health care services through telemedicine or by store-and-
2 forward means shall not be required, to the extent their waiver is permitted by
3 federal law or guidance regarding enforcement discretion:

4 (1) delivering health care services, including dental services, using a
5 connection that complies with the requirements of the Health Insurance
6 Portability and Accountability Act of 1996, Pub. L. No. 104-191 in accordance
7 with 8 V.S.A. § 4100k(i), as amended by this act, if it is not practicable to use
8 such a connection under the circumstances;

9 (2) representing to a patient that the health care services, including
10 dental services, will be delivered using a connection that complies with the
11 requirements of the Health Insurance Portability and Accountability Act of
12 1996, Pub. L. No. 104-191 in accordance with 18 V.S.A. § 9361(c), if it is not
13 practicable to use such a connection under the circumstances.

14 * * *

15 Sec. 2. 2020 Acts and Resolves No. 140, Sec. 15, as amended by 2021 Acts
16 and Resolves No. 6, Sec. 2 and 2022 Acts and Resolves No. 85, Sec. 2, is
17 further amended to read:

18 Sec. 15. BOARD OF MEDICAL PRACTICE; TEMPORARY
19 PROVISIONS; PHYSICIANS, PHYSICIAN ASSISTANTS,
20 AND PODIATRISTS

1 (a) Notwithstanding any provision of 26 V.S.A. § 1353(11) to the contrary,
2 the Board of Medical Practice or its Executive Director may issue a temporary
3 license through March 31, ~~2023~~ 2024 to an individual who is licensed to
4 practice as a physician, physician assistant, or podiatrist in another jurisdiction,
5 whose license is in good standing, and who is not subject to disciplinary
6 proceedings in any other jurisdiction. The temporary license shall authorize
7 the holder to practice in Vermont until a date not later than April 1, ~~2023~~ 2024,
8 provided the licensee remains in good standing.

9 (b) Through March 31, ~~2023~~ 2024, the Board of Medical Practice or its
10 Executive Director may waive requirements for physician assistants, including
11 scope of practice requirements and the requirement for documentation of the
12 relationship between a physician assistant and a physician pursuant to
13 26 V.S.A. § 1735a. The Board or Executive Director may impose limitations
14 or conditions when granting a waiver under this subsection.

15 Sec. 3. 18 V.S.A. § 9721 is amended to read:

16 § 9721. ADVANCE DIRECTIVES; COVID-19; REMOTE WITNESSES
17 AND EXPLAINERS

18 * * *

19 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
20 the contrary, an advance directive executed by a principal between June 15,
21 2020 and **March 31, 2023** shall be deemed to be valid even if the principal

1 signed the advance directive outside the physical presence of one or both of the
2 required witnesses, provided all of the following conditions are met with
3 respect to each remote witness:

4 * * *

5 (d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this
6 title to the contrary, an advance directive executed by a principal between
7 February 15, 2020 and **March 31, 2023** while the principal was being admitted
8 to or was a resident of a nursing home or residential care facility or was being
9 admitted to or was a patient in a hospital shall be deemed to be valid even if
10 the individual who explained the nature and effect of the advance directive to
11 the principal in accordance with subsection 9703(d) or (e) of this title, as
12 applicable, was not physically present in the same location as the principal at
13 the time of the explanation, provided the individual delivering the explanation
14 was communicating with the principal by video or telephone.

15 (2) An advance directive executed in accordance with this subsection shall
16 remain valid as set forth in subsection (b) or (c) of this section, as applicable.

17 Sec. 4. 18 V.S.A. § 4755 is added to read:

18 § 4755. BUPRENORPHINE; PRESCRIPTION RENEWALS

19 To the extent permitted under federal law, a health care professional
20 authorized to prescribe buprenorphine for treatment of substance use disorder

1 may authorize renewal of a patient’s existing buprenorphine prescription
2 without requiring an office visit.

3 Sec. 5. BOARD OF MEDICAL PRACTICE; PHYSICIAN LICENSURE;
4 REPORT

5 On or before January 15, 2024, the Board of Medical Practice shall report to
6 the House Committee on Health Care and the Senate Committee on Health and
7 Welfare regarding options for streamlining and modernizing the physician
8 licensure process, such as:

9 (1) alternatives to requiring an original birth certificate as a method of
10 proving identification;

11 (2) the status of obtaining fingerprint-supported background checks and
12 being able to serve as the State of Principal Licensure for purposes of
13 participation in the Interstate Medical Licensure Compact;

14 (3) offering provisional licenses pending full document verification; and

15 (4) allowing Board of Medical Practice staff to approve uncomplicated
16 license applications.

17 Sec. 6. EFFECTIVE DATE

18 This act shall take effect on passage.